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EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JONATHAN J. HULL, and PETER HART

Appeal 2009-009793
Application 09/532,412
Technology Center 2100

Before LANCE LEONARD BARRY, ST. JOHN COURTENAY III, and THU A. DANG, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's final decision rejecting claims 1-40. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We Reverse.

Claim 1 is illustrative:

1. A method comprising:

extracting a first data from a display buffer, the first data being generated by a first application and being associated with a user interface from the first application;

recognizing a layout from the first data; and

using the layout to create an overlay to display a second data generated by a second application, wherein there is no direct link between the first application and the second application, and wherein the first data is extracted from the display buffer without cooperation of the first application at runtime.

The Examiner relies on the following prior art references as evidence of unpatentability:

Stucka	US 5,596,702	Jan. 21, 1997
Kahl	US 5,936,625	Aug. 10, 1999

Appellants appeal the following rejections:

1. Claims 1-26, 28-30, 32-34, and 36-40 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Stucka.

2. Claims 27, 31, and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Stucka and Kahl.

ISSUE

Based upon our review of the administrative record, we have determined that the following issue is dispositive in this appeal:

> Under § 102, did the Examiner err in finding that Stucka discloses extracting data from the display buffer without cooperation of the first application at runtime, within the meaning of independent claims 1, 9, 17, 25, 29, 33, and 37? (*See* App. Br. 8, Reply Br. 3).

FACTUAL FINDINGS (FF)

1. Stucka discloses that application A issues an initialize command. The initialize command allows the application to set up parameters for the exchange of information with the user interface server (UIS). (Col. 23, ll. 63-66).
2. Stucka discloses that "[t]he initialize commend is sent to the UIS with various command parameter data required to initialize the user interface sessions between application A and the UIS. The initialize command itself may be utilized multiple times by the application to establish multiple user interface sessions." (Col. 23, l. 66 – col. 24, l. 41).

3. Stucka discloses that the UIS 48 utilizes the working memory area 78 for loading and operating on user interfaces retrieved from the display object store. (Col. 8, ll. 18-21).

ANALYSIS

Appellants contend that Stucka does not disclose the limitation of extracting the data of an application from a display buffer, particularly, without cooperation of the application. (Reply Br. 3). Based upon our review of the record, we find the evidence supports the Appellants' position.

The Examiner contends that Stucka discloses extracting first data from a display buffer because the RAM operates as a working memory area and as a display buffer. (Ans. 11). However, we agree with Appellants that the Examiner has not established how the extraction is performed *without the cooperation of the first application*, as recited in the independent claims.

The Examiner contends that "Stucka uses the user interface server or UIS to extract [a] modified layout component, such as change of the color or the text, *from the working memory area*." (Ans. 12)(emphasis added). However, while we agree that Stucka discloses that the UIS extracts data from RAM (FF 3), we find that the first application (Application A) is very much involved in doing so.

Stucka discloses that the initialize command is sent to the UIS with various command parameter data required to initialize the user interface sessions between application A and the UIS. (FF 2). Stucka further discloses that the initialize command may be utilized multiple times *by the application* to establish multiple user interface sessions. (FF 2). Therefore,

even if the UIS extracts information from RAM 38, the application initializes the call to the UIS each time, thereby *providing cooperation* in extracting the data.

On this record, we find the evidence supports Appellants' contention that in order to access the UIS, an application has to be complied and linked with the Application Programming Interfaces (APIs) of the UIS. (Reply Br. 4). Without using the APIs of the UIS, we agree with Appellants that an application cannot access the UIS. (*Id.*).

Therefore, assuming *arguendo* that the RAM 38 of Stucka serves as the display buffer as argued by the Examiner, we agree with Appellants that the Examiner has not established how the first data is extracted from the display buffer *without cooperation of the first application at runtime*, as recited in the independent claims before us on appeal. We note that "absence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.,* 793 F.2d 1565, 1571 (Fed. Cir. 1986) (citation omitted).

Accordingly, for essentially the same reasons argued by Appellants, and for the reasons further discussed *supra*, we reverse the Examiner's anticipation rejection for each independent claim on appeal. Because we have reversed the Examiner's rejection of each independent claim on appeal, we also reverse the Examiner's anticipation rejections for dependent claims 2-8, 10-16, 18-24, 26, 28, 30, 32, 34, 36, and 38-40.

Regarding the § 103 rejection of claims 27, 31, and 35, the Examiner has not shown, and we do not find, that the secondary Kahl reference cures the aforementioned deficiencies of Stucka. Therefore, we reverse the § 103 rejection on the same grounds discussed *supra*.

DECISION

We reverse the Examiner's § 102 rejection of claims 1-26, 28-30, 32-34, and 36-40.

We reverse the Examiner's § 103 rejection of claims 27, 31, and 35.

ORDER

REVERSED

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